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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,832

04/05/2005

Jorg Heuer

112740-1052

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EXAMINER

KERZHNER, ALEKSANDR

ART UNIT

PAPER NUMBER

2162

MAIL DATE

DELIVERY MODE

05/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/521,832	Applicant(s) HEUER ET AL.	
	Examiner ALEKSANDR KERZHNER	Art Unit 2162	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 15-28.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kuen S Lu/
 Primary Examiner, Art Unit 2167

Continuation of 3 and 11. NOTE:

Proposed amendment will not be entered because changing "the normalized XML schema" into "the associated normalized XML schema" would change the scope of the claim. As such this change will require further search and/or consideration.

Further proposed amendment will not be entered because claim 15 and 20 as amended is deemed not to place the application in a better condition for allowance as "the associated normalized XML schema" would raise a question of antecedent basis under 35 U.S.C. 112, second paragraph.

As per applicant's arguments that:

"Claims 15, 19-20 and 24-28 have been rejected under 35 USC 103(a) as unpatentable over Seyrat (FR 2813743) in view of Seyrat (ISO). The rejection is respectfully traversed since the FR 2813743 reference is not appropriate prior art. The '743 reference has a publication date of March 8, 2002 (as indicated by the Examiner on PTO-892 and on the cover of the published document), which is after the priority date of the instant application, namely September 27, 2001. The application date of September 6, 2000 is the filing date in France (foreign country), and therefore ineffective for as a priority date over the instant application. Hence, the rejection should be withdrawn. "

Examiner, after a thorough review of all the documents submitted, was unable to find support for applicant's allegation that the priority date of the instant application is September 27, 2001. Not only was there no priority claimed to a document with a date of September 27, 2001, there was not one document of record that was such dated.

Examiner respectfully asserts that the earliest date benefit of priority was claimed to was 07/15/2002 which clearly is AFTER the date of Seyrat (FR 2813743), which is 03/08/2002 as cited by examiner and argued by the applicant.

The following is a summary of benefit claims Examiner bases his assertions on:

Instant application 10/521832 is a national stage entry of PCT/DE03/02274 filed 07/07/2003.
Above PCT as well as the declaration submitted on 01/02/2005 claims priority from applications:
German Application 102 31 971.5, filed 07/15/2002, and
German Application 102 48 758.8, filed 10/18/2002.

Certified copies of both German applications were submitted. Examiner notes that no certified translations were required because no intervening references were used in the rejections.

Examiner respectfully requests that the applicant in the future communications would explicitly and clearly point to the evidence supporting the allegation of priority date of instant application being September 27, 2001.

CONCLUSION

CONCLUSION:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aleksandr Kerzhner whose telephone number is (571)270-1760. The examiner can normally be reached on Mon-Fri 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aleksandr Kerzhner/
Examiner, Art Unit 2162